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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12
13 KATHERINE MCNENNY and ADRIAN
14 RISKIN,

15 Petitioners and Plaintiffs,

16 vs.

17 LOS ANGELES CHINATOWN BUSINESS
18 COUNCIL, a non-profit corporation,

19 Respondent and Defendant.

) Case No.: BS174784

) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **VERIFIED PETITION FOR WRIT OF**
) **MANDATE AND COMPLAINT FOR**
) **DECLARATORY AND INJUNCTIVE**
) **RELIEF UNDER THE CALIFORNIA**
) **PUBLIC RECORDS ACT**

) **[Gov't Code §§ 6250, *et seq.*; Civ. Proc. Code**
) **§§ 1085, *et seq.*]**

) **DATE: July 24, 2019**

) **TIME: 9:30 a.m.**

) **DEPT: 86**

) **JUDGE: HON. MITCHELL L. BECKLOFF**

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1 I. INTRODUCTION

2 This is an action to enforce the California Public Records Act (“CPRA”) against Respondent
3 and Defendant Los Angeles Chinatown Business Council, a.k.a. the Greater Chinatown Business
4 Improvement District¹ (“Respondent” or “the BID”). Petitioners and Plaintiffs Katherine McNenny
5 and Adrian Riskin² (“Petitioners”) repeatedly requested easy-to-provide public records subject to
6 mandatory disclosure under the CPRA. Petitioners sought these records to better understand the
7 BID’s part in opposing the formation of the Skid Row Neighborhood Council (“SRNC”), as well as
8 the BID’s role as a political actor in Los Angeles generally.

9 Petitioners made various attempts to request these public records by email, certified mail,
10 and telephone. Nevertheless, the BID ignored Petitioners’ communications entirely and failed to
11 respond at all to any of their requests. Petitioners were left with no choice but to file the present
12 action in order to enforce their rights under the law. Even after Petitioners filed suit, Respondent has
13 failed to engage in litigation. Respondent failed to file a responsive pleading, failed to appear at
14 multiple trial-setting conferences, ignored Petitioners’ discovery requests, and failed to respond to
15 all communications from Petitioners’ counsel. In so doing, the BID continues to demonstrate its
16 hostility toward the CPRA and transparency in public business.

17 Petitioners respectfully request from this Court: 1) a writ of mandate which orders
18 Respondent to, within 30 days of the issuance of the writ of mandate, produce all disclosable
19 requested records to Petitioners; 2) a declaration that Respondent’s conduct denying access to
20 public records violates the CPRA; and 3) a permanent injunction enjoining Respondent, its agents,
21 employees, officers, and representatives from continuing its existing pattern and practice of
22 violating the CPRA and ordering Respondent to track and report to the Court and to the public on
23 its responses to public records requests for a period of time not less than one year. Additionally,
24 Petitioners request that the Court declare them to be the prevailing party entitled to an award of
25 attorneys’ fees and costs, the exact amount of which to be set upon motion for attorneys’ fees.

26 _____
27 ¹ The Greater Chinatown Business Improvement District is also referred to as the Greater Chinatown Business and
Community Benefit Business Improvement District.

28 ² Petitioners are both members of the public within the meaning of Cal. Gov’t Code § 6252(b)-(c).

II. FACTUAL SUMMARY

A. **Background on the BID and the Skid Row Neighborhood Council**

This litigation concerns CPRA requests that Petitioners submitted to Respondent, a nonprofit corporation that contracts with the City of Los Angeles to manage the Greater Chinatown Business Improvement District.³ (Petitioners' Request for Judicial Notice ("RJN") Exhibit A.) The BID obtains revenue from assessments to parcels of real property which the City of Los Angeles collects and disburses to the BID. *Id.* Respondent and its Board of Directors are subject to the CPRA under both its contract with the City of Los Angeles and pursuant to California Streets and Highways Code § 36612. *Id.*

There are 97 neighborhood councils across the City of Los Angeles, each receiving public funds, that assist communities in working with local government to address community needs. (Petition and Complaint ("Petition") ¶ 9.) In late 2016, residents of Skid Row, many of whom are homeless, sought to create their own neighborhood council to increase their political representation in the city. (Petition ¶ 10.) The proposed SRNC bylaws guaranteed multiple council board seats to low-income renters and/or unhoused individuals, as well as to those providing services to those communities. (*Id.*) An election to vote on the establishment of the SRNC was scheduled from March 29, 2017 to April 6, 2017. (Petition ¶ 11.)

A variety of business interests, including many Los Angeles BIDs, joined together in the organization United Downtown LA, LLC ("United DTLA") to lobby against the formation of the SRNC. (Petition ¶ 2.) After a controversial election, which was later the subject of litigation, the SRNC's formation was narrowly defeated. (*Id.*) Petitioners obtained records from various CPRA requests which suggested that Respondent was likely among those BIDs participating in the effort to defeat SRNC. (*Id.*) Petitioners submitted the public records requests that are the subject of this litigation in order to better understand Respondent's role in United DTLA, its opposition to the SRNC, and its general role as a political actor in Los Angeles. (*Id.*)

³ Respondent Los Angeles Chinatown Business Council is a property owners' association pursuant to the Property and Business Improvement District Law of 1994, California Streets and Highways Code § 36600, *et seq.*

1 **B. The BID failed to produce Petitioners' requested records**

2 1. The BID ignored McNenny's CPRA requests

3 On May 28, 2017, McNenny submitted a CPRA request to Respondent to the email address
4 listed on Respondent's website: info@chinatownla.com. (Petition ¶ 13.) The request ("McNenny
5 Request 1") sought two categories of records dated from January 1, 2017 to May 28, 2017: (1) all
6 BID emails which contained an enumerated list of keywords related to the SRNC election, and (2)
7 all BID emails to and/or from certain named individuals involved in the SRNC election. (*Id.*)

8 The BID did not respond to McNenny's request within 10 days with a determination of
9 disclosability and estimated date of production, as required by Cal. Gov't Code § 6253(c).⁴ (*Id.*)
10 Indeed, Respondent did not reply to McNenny's request at all. (*Id.*) On June 15, 2017, McNenny
11 sent another email to Respondent to inquire as to the status of her request. (Petition ¶ 14.) She
12 notified Respondent that it had not complied with its legal duty to respond to her request within 10
13 days of receipt. (*Id.*) Again, the BID did not respond to McNenny. (*Id.*)

14 After months of the BID's continued silence, McNenny sent another email to Respondent
15 inquiring as to the status of her request on May 5, 2018. (Petition ¶ 15.) She asked that Respondent
16 provide a response to her request and comply with the law "so this matter can be resolved without
17 legal action." (*Id.*) Additionally, McNenny requested further records showing the staff and/or
18 individuals who were authorized to conduct business on behalf of the BID from January 1, 2017 to
19 May 28, 2017 ("McNenny Request 2"). (*Id.*) Yet again, Respondent failed to respond to McNenny's
20 communication.

21 On July 2, 2018, undersigned counsel telephoned Respondent at the telephone number listed
22 on the BID's website. (Petition ¶ 16.) There was no answer, so counsel left a voice message
23 inquiring as to the proper location to submit CPRA requests. (*Id.*) Counsel provided her telephone
24 number for a response. (*Id.*) Nevertheless, the BID again failed to reply. (*Id.*)

25 Rather than proceeding directly to litigation, McNenny attempted yet another avenue of
26 contact with the BID. On July 23, 2018, she sent her CPRA requests to Respondent via certified
27

28 ⁴ Unless otherwise stated, all references to code sections are to the Cal. Gov't Code.

1 mail to the mailing address listed on the BID's website. (Petition ¶ 17.) This mailing address is also
2 the address Respondent registered with the California Secretary of State for service of process. (*Id.*;
3 RJN, Exhibit B.) In McNenny's letter, she stated that, if she did not receive a response by close of
4 business on July 27, 2018, she would understand the lack of response to be the BID's refusal to
5 provide records. (Petition ¶ 17.) The letter was delivered on July 25, 2018. (*Id.*) Yet again, the BID
6 provided no response to McNenny. (*Id.*)

7 On July 25, 2018, McNenny sent yet another email to the BID, repeating her requests and
8 imploring Respondent to provide the requested records promptly "so this matter can be resolved
9 without legal action." (Petition ¶ 18.) True to form, Respondent did not reply to this email. (*Id.*)

10 In sum, over the course of 14 months, McNenny attempted to request records from the BID
11 via email, telephone, and certified mail. Despite these diligent attempts to induce the BID to comply
12 with the law, the BID ignored all of McNenny's communications and failed to produce even one
13 public record. With no other options available, McNenny filed the instant suit on August 15, 2018.

14 2. The BID ignored Riskin's CPRA requests

15 On March 23, 2018, Riskin submitted a CPRA request ("Riskin Request 1") to the BID at
16 info@chinatownla.com. (Petition ¶ 20.) The request sought emails dated from January 1, 2017
17 through the date of the BID's compliance with the request that 1) were sent to/from/cc/bcc the
18 BID's board or staff and various named individuals and domain names, and 2) were in possession of
19 anyone on the BID's staff or board and contained the word "Skid." (*Id.*)

20 The BID did not respond to Riskin Request 1 within 10 days with a determination of
21 disclosability and estimated date of production, as required by § 6253(c). (*Id.*) Indeed, Respondent
22 did not reply to Riskin's request at all. (*Id.*) On April 6, 2018 and again on June 7, 2018, Riskin sent
23 emails to Respondent inquiring as to the status of Riskin Request 1. (Petition ¶ 21.) He informed
24 Respondent that it had failed to respond to his request within 10 days as required by law. (*Id.*) The
25 BID provided no response. (*Id.*)

26 On March 31, 2018, Riskin submitted a second CPRA request ("Riskin Request 2") to
27 Respondent via email. (Petition ¶ 22.) The request sought emails between the anyone on the BID's
28

1 board or staff and the email address michaelkfong@gmail.com that were dated from January 1,
2 2015 through the date of the BID's compliance with the request. (*Id.*)

3 The BID did not respond to Riskin Request 2 request at all, let alone within 10 days as
4 required by § 6253(c). (*Id.*) On April 11, 2018 and June 7, 2018, Riskin sent emails to Respondent
5 inquiring as to the status of the request. (Petition ¶ 23.) The BID again did not respond. (*Id.*)

6 Finally, on March 31, 2018, Riskin submitted a third CPRA request ("Riskin Request 3") to
7 Respondent via email. (Petition ¶ 24.) The request sought emails dated from January 1, 2015 to the
8 date of the BID's compliance with the request between anyone on the BID's board or staff and
9 anyone at the domain marvimon.com. (*Id.*)

10 Again, the BID did not respond to Riskin Request 3 within 10 days as required by § 6253(c).
11 (*Id.*) Yet again, the BID simply ignored the request and provided no response. (*Id.*) On both April
12 11, 2018 and June 7, 2018, Riskin sent emails to Respondent inquiring as to the status of Riskin
13 Request 3. (Petition ¶ 25.) The BID again did not respond. (*Id.*)

14 Rather than proceeding directly to litigation, Riskin sent a letter to Respondent via certified
15 mail on April 26, 2018 containing copies of all three of his public records requests. (Petition ¶ 26.)
16 He mailed the three requests to George Yu, the BID's Executive Director, at the mailing address
17 listed on the BID's website. (*Id.*) Again, this mailing address is also the address Respondent
18 registered with the California Secretary of State for service of process. (*Id.*) The letter was delivered
19 on April 28, 2018. (*Id.*) The BID did not respond. (Petition ¶ 28.)

20 As previously described, undersigned counsel called Respondent on July 2, 2018 at the
21 phone number listed on the BID's website. (Petition ¶ 27.) Because there was no answer, counsel
22 left a voice message inquiring as to the proper location to submit CPRA requests and providing a
23 telephone number for response. (*Id.*) The BID did not respond to this telephone call. (*Id.*)

24 In sum, the course of 4 months, Riskin requested records from the BID via email, telephone,
25 and certified mail. Despite these diligent attempts to induce the BID to comply with the law, the
26 BID ignored Riskin's communications entirely and failed to produce even one requested record.
27 With no other options available, Riskin filed the instant suit on August 15, 2018.

1 3. Records responsive to Petitioners' requests exist and are being withheld by the BID

2 As detailed in the Petition, Petitioners are in possession of a variety of records that they
3 received from other public records requests that would be responsive to their requests to
4 Respondent. As such, it is extremely likely that Respondent is in possession of these records and is
5 withholding them under the CPRA.

6 As one example, McNenny Request 1 asked for all Respondent's emails that mention the
7 "Skid Row Neighborhood Council," and Riskin Request 1 asked for all emails in the possession of
8 anyone on the BID's staff or board that contain the word "Skid." Petitioners are in possession of an
9 email chain sent to various individuals, including the BID's Executive Director George Yu, with the
10 subject line "***IMPORTANT UPDATE** Skid Row Neighborhood Council." (Petition ¶ 30.)
11 Emails in the chain were sent in March 2017 and April 2017, within the time frames of both
12 Petitioners' requests. (*Id.*) Some emails ask BID representatives to appear at a city council
13 committee meeting to testify about the SRNC election. (*Id.*) In other emails, BID representatives are
14 encouraged to send their staff members to pop-up polls, and some email authors state that they
15 would like to only validate parking at pop-up polls for those voting against the creation of the
16 SRNC. (*Id.*) These emails are clearly responsive to both Petitioners' requests, and Respondent has a
17 legal obligation to produce these records. It is extremely likely that many other responsive records
18 exist, and the public can only access those records through a CPRA request. However, Respondent
19 has refused to produce these records, thereby unlawfully withholding them from the public.

20 **C. The BID has failed to at all participate the present litigation**

21 Petitioners initiated suit in this matter on August 15, 2018. Respondent was personally
22 served process on August 17, 2018. (von Herrmann Declaration ("Decl.") ¶ 2.) The BID's deadline
23 to file a responsive pleading was September 17, 2018. Code Civ. Proc. ("CCP") § 412.20. The BID
24 did not file a responsive pleading. (*Id.*)

25 Moreover, the BID has failed to appear at three separate trial setting conferences—on
26 November 16, 2018, December 26, 2018, and February 1, 2019. (Decl. ¶ 5.) The BID failed to
27 produce any responses to Petitioners' Discovery Set One or to Petitioners' attempt to meet and
28 confer about the BID's lack of discovery response, necessitating Petitioners to file a motion to

1 compel. (Decl. ¶ 6.) The BID has also failed to respond to various communications from
2 Petitioners' counsel to discuss a possible resolution to the present litigation. (Decl. ¶¶ 3-4, 7.) In
3 short, the BID has failed to engage in the present litigation in any way whatsoever, further
4 demonstrating its disregard for public transparency and its legal obligations under the CPRA.

5 **III. LEGAL ARGUMENT**

6 **A. Because Respondent failed to submit a responsive pleading, all facts Petitioners allege** 7 **should be deemed uncontroverted and true**

8 Although a respondent's failure to file a responsive pleading does not require a peremptory
9 writ to be granted by default, the factual allegations in the petition may be deemed uncontroverted
10 and true if no responsive pleading is filed. CCP §§ 1088, 1094 ("If no return be made, the case may
11 be heard on the papers of the applicant."); *see also Bank of America, N.A. v. Superior Court* (2013)
12 212 Cal.App.4th 1076, 1084 ("In the absence of a return, all well-pleaded and verified allegations of
13 the writ petition are accepted as true."); *Titmas v. Superior Court* (2001) 87 Cal.App.4th 738, 741
14 (same).

15 Here, Respondent failed to file any return, let alone within 30 days as required by law. All of
16 Petitioners' factual allegations in the Petition should therefore be deemed uncontroverted and true.

17 **B. Respondent unlawfully withheld all records responsive to Petitioners' CPRA requests**

18 Respondent unlawfully withheld all public records requested by Petitioners and violated
19 various other duties under the CPRA. The BID withheld clearly-disclosable public records for over
20 14 months prior to litigation and has continued to withhold such records for the more than 9 months
21 that have passed since litigation commenced. By completely ignoring Petitioners' requests for
22 records for nearly two years, Respondent effectively makes secret the BID's operations, shields the
23 BID from public accountability, and frustrates the democratic process. Particularly given
24 Respondent's suspected involvement in the defeat of the SRNC, which prevented some of Los
25 Angeles' most disenfranchised residents from exercising political power, the public interest in the
26 requested records is great. Given Respondent's failure to even acknowledge Petitioners' requests
27
28

1 and their tacit refusal to produce any public records, the present litigation is necessary to enforce
2 Petitioners' rights under the CPRA.

3 1. General principles of the CPRA

4 Pursuant to the CPRA, members of the public have a right to access government records.
5 § 6250, *et seq.* In enacting the CPRA, the California Legislature declared that "access to
6 information concerning the conduct of the people's business is a fundamental and necessary right of
7 every person in this state." § 6250; *see also County of Los Angeles v. Superior Court* (2012) 211
8 Cal.App.4th 57, 63. To facilitate the public's access to this information, the CPRA mandates, *inter*
9 *alia*, that "each state or local agency, upon a request for a copy of records that reasonably describes
10 an identifiable record or records, shall make the records promptly available." § 6253(b).

11 When a member of the public submits a record request to an agency, the agency is given 10
12 days to determine whether the request seeks copies of disclosable public records in the agency's
13 possession and must promptly notify the requestor of that determination and the reasons therefor.
14 § 6253(c). In statutorily-identified "unusual circumstances," and "only to the extent reasonably
15 necessary to the proper processing of the particular request," this time period may be extended a
16 maximum of 14 days. § 6253(c)-(d). The law requires that agencies make non-exempt public
17 records available to requestors "promptly." § 6253(b). It is unlawful for an agency "to delay or
18 obstruct the inspection of public records." § 6253(d).

19 Where an agency withholds responsive records on the basis of a statutory exemption, "the
20 agency . . . must disclose that fact." *Haynie v. Superior Court* (2001) 26 Cal. 4th 1061, 1072. Even
21 if portions of a document are exempt from disclosure, the agency must disclose the remainder of the
22 document. § 6253(a). An agency that receives a request must also "[p]rovide suggestions for
23 overcoming any practical basis for denying access to the records or information sought." § 6253.1.

24 Notably, the agency bears the burden of justifying nondisclosure of requested records.
25 § 6255(a). In determining whether exemptions apply, courts must follow the constitutional
26 imperative that the applicability of exemptions must be construed narrowly and that the people's
27 right of access must be construed broadly. Cal. Constitution, Art. I, § 3(b)(2); *see also Sacramento*
28

1 *County Employees' Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440, 453.

2 Whenever it is made to appear by verified petition to the Superior Court that certain public
3 records are being improperly withheld from a member of the public, the Court shall order the
4 individual charged with withholding the records to disclose the public record or show cause why he
5 or she should not do so. § 6259(a)-(b). The CPRA favors speedy resolution of litigation to ensure
6 prompt access to records, both at the trial court and appellate levels. *See* § 6258 ("The times for
7 responsive pleadings and for hearings in these proceedings shall be set . . . with the object of
8 securing a decision as to these matters at the earliest possible time."); *Times Mirror Co. v. Superior*
9 *Court* (1991) 53 Cal.3d 1325, 1334-35 (purpose of CPRA extraordinary writ appellate procedure is
10 to prevent public agencies from delaying disclosure while appeal is pending).

11 A petitioner prevails under the CPRA where she shows that an agency unlawfully denied
12 access to records. *Comm. Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th
13 1385, 1446-47 ("*National City*"); *see also Galbiso v. Orosi Pub. Utility Dist.* (2008) 167 Cal.App.
14 4th 1063, 1088-89 (finding an agency violated the CPRA when it generally denied the right to
15 access records, even absent an explicit refusal to provide access to a specific record). Importantly,
16 an agency is not protected from liability merely because the denial of access was due to its internal
17 logistical problems or general neglect of its duties. *National City*, 220 Cal.App.4th at 1446-47.

18 2. Petitioners' requests sought records that the BID has a legal duty to disclose

19 Here, all five of Petitioners' requests sought disclosable records that the BID is legally
20 required to produce. Notably, the burden is on the agency to justify its withholding of these
21 requested records. § 6255(a); *see also American Civil Liberties Union of Northern California v.*
22 *Superior Court* (2011) 202 Cal.App.4th 55, 85 (agencies ordinarily must provide a "detailed
23 justification" to withhold records from the public). Still, it is clear that Petitioners' requests sought
24 disclosable records. By refusing to produce these records, the BID has violated the CPRA.

25 McNenny Request 1 and all three of Riskin's requests are for certain BID staff and board
26 emails. BID staff and board emails are subject to the CPRA. Respondent's contract with the City
27 states that Respondent and its board of directors are "subject to and must comply with the California
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Public Records Act.” (RJN, Exhibit A.) Even notwithstanding the contract, the California Supreme Court has held that the individuals who act on behalf of a public agency are subject to the CPRA because “a governmental entity, like a corporation, can act only through its individual officers and employees. A disembodied governmental agency cannot prepare, own, use or retain any record. Only the human beings who serve in agencies can do these things.” *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 620 (internal citations omitted). Indeed, BID staff and board emails that relate to the public business are subject to disclosure under the CPRA even when located in private accounts or devices. “[T]here is no indication the Legislature meant to allow public officials to shield communication about official business simply by directing them through personal accounts. Such an expedient would gut the public’s presumptive right of access.” *Id.* at 624.

Moreover, it defies credulity that all the requested emails—or indeed, any of the requested emails—would be properly subject to any of the statutory exemptions to the CPRA. *See generally* § 6254-55. In the unlikely event that Respondent could establish that any portion of these emails was subject to any of the CPRA’s statutory exemptions, those sections may be redacted, and the remainder of the records must be disclosed. *See* § 6253(a).

McNenny Request 2 asked for access to records reflecting the staff and/or individuals who were authorized to conduct business on behalf of the BID from January 1, 2017 to May 28, 2017. Such records are clearly not exempt from disclosure and must be produced under the CPRA.

As such, Respondent has a duty to provide all records responsive to Petitioners’ five requests.

3. The BID violated all of its legal duties under the CPRA

Petitioners submitted five total requests for clearly-identifiable, disclosable records that would shed light on the BID’s exercise of political power in Los Angeles. For each request, Respondent denied all access to public records through its pattern and practice of total nonresponse.

Respondent failed its duty to respond to Petitioners’ requests within 10 days of receipt with a determination of disclosability. *See* § 6253(c). Respondent failed its duty to notify Petitioners within 10 days of receiving their requests of the estimated date and time when any disclosable

1 records would be made available. *See id.* Respondent failed its duty to notify Petitioners that it was
2 withholding records in response to their requests. *See Haynie*, 26 Cal.4th at 1072. Respondent failed
3 its duty to notify Petitioners of the names and titles or positions of each individual responsible for
4 its ultimate denial of their request for records. *See* § 6253(d). Respondent failed its duty to conduct
5 a reasonable search for Petitioners’ requested records. *See City of San Jose*, 2 Cal.5th at 627.
6 Respondent failed its duty to make all non-exempt requested records “promptly” available. *See*
7 § 6253(b). Respondent failed its duty to assist Petitioners with their requests and to provide
8 suggestions for overcoming any practical basis for denying access to records. *See* § 6253.1. And
9 Respondent failed its duty to not delay or obstruct Petitioners’ receipt of disclosable public records.
10 *See* § 6253(d).

11 Most critically, Respondent failed its duty to provide access to public records by
12 withholding all requested records through its total nonresponse to Petitioners’ requests. Despite
13 Petitioners’ repeated follow-up communications via email, telephone, and certified mail, the BID
14 has failed to provide any response to their CPRA requests for nearly two full years. The BID’s
15 complete and unjustified refusal to provide even one requested public record demonstrates its
16 hostility to democratic transparency and blatantly violates the CPRA.

17 **C. Petitioners’ requested relief is appropriate**

18 As detailed above, Respondent is continuing to withhold all the public records that
19 Petitioners requested, all of which are subject to mandatory production under the CPRA. As such, a
20 writ of mandate is necessary

21 Moreover, declaratory relief is appropriate in the present case. § 6258; *see also National*
22 *City*, 220 Cal.App.4th at 1446-1447 (petitioner obtained declaratory relief where agency violated
23 various provisions of the CPRA). Declaratory relief is appropriate where an “actual controversy”
24 exists. CCP § 1060; *Wilson v. Transit Authority* (1962) 199 Cal.App.2d 716, 722. An “actual
25 controversy” includes a probable future controversy, so long as the controversy is ripe.
26 *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877,
27 885. Whether a future controversy is probable can turn on whether evidence shows that a
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1 respondent will continue the offending practice. *See California Alliance for Utility etc. Education v.*
2 *City of San Diego* (1997) 56 Cal.App.4th 1024, 1029-1030. A court can presume a Respondent will
3 continue an offending practice in light of a Respondent's refusal to admit the violation. *Id.* Here, not
4 only has the BID failed to admit any violation of the CPRA, the BID has failed to engage in this
5 litigation in any way whatsoever, demonstrating a total disregard for transparency in public business
6 and for its legal obligations under the CPRA. It is therefore extremely likely that the BID will
7 continue to show the same indifference to the CPRA in the future. Declaratory relief is warranted
8 and should issue.

9 Petitioners' requested injunctive relief is also appropriate. § 6258. Injunctive relief is
10 properly granted where there is a need for prospective relief. *See National City*, 220 Cal.App.4th at
11 1404. Here, Respondent's ongoing enmity toward the CPRA and its refusal to engage in the present
12 litigation indicates that it has no intention of altering its practice of unlawfully denying all access to
13 its public records. The BID treated the requests from both Petitioners—two separate requestors
14 submitting requests approximately one year apart—with equal disregard, indicating that it
15 indiscriminately ignores many, if not all, of the public records requests it receives. In the absence of
16 injunctive relief, Petitioners and the public at large are likely to face ongoing harm in the form of
17 continued lack of access to the BID's public records and total lack of transparency over the BID's
18 political and lobbying efforts in Los Angeles. *See DVD Copy Control Association, Inc. v.*
19 *Kaleidescape, Inc.* (2009) 176 Cal.App.4th 697, 722 (to say that harm is "irreparable" meriting a
20 permanent injunction "is simply another way of saying that pecuniary compensation would not
21 afford adequate relief or that it would be extremely difficult to ascertain the amount that would
22 afford adequate relief."). Injunctive relief is therefore appropriate.

23 Finally, the CPRA mandates that the Court "shall" award costs and reasonable attorneys'
24 fees to a requestor who prevails in litigation. § 6259(d). The purpose of that provision is to provide
25 "*protections and incentives* for members of the public to seek judicial enforcement of their right to
26 inspect public records subject to disclosure." *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 427
27 (emphasis added). A plaintiff "prevails" under the CPRA where she shows that an agency
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1 unlawfully denied access to records. *National City*, 220 Cal.App.4th at 1446-1447. Even partial
2 relief entitles a plaintiff to a fee award, unless the results are "so minimal or insignificant as to
3 justify a finding that the plaintiff did not [in fact] prevail." *Id.* (internal citations omitted). Here,
4 Respondent clearly unlawfully denied access to records. The BID has failed to produce even a
5 single record in response to Petitioners' five requests for over 14 months prior to litigation and
6 ignored Petitioners' multiple follow-up communications through various points of contact. The
7 BID's conduct plainly shows that it had no intention to produce records. Even after litigation, the
8 BID has expressed a total disregard for the law and has continued to withhold all requested records.
9 Petitioners have clearly prevailed.

10 Even in the unlikely event that records responsive to Petitioners' requests have been deleted
11 or otherwise become unavailable in the nearly two years since Petitioners' initial request, this would
12 not moot the present litigation. *See National City*, 222 Cal.App.4th at 1445-1447 (individual could
13 qualify as a "prevailing" party even though agency never released the requested records, as records
14 were lost or missing and petitioner obtained declaratory relief that there had been CPRA violations);
15 *Galbiso*, 167 Cal.App.4th at 1088-1089 (a requestor prevailed under the CPRA and was entitled to
16 attorney's fees where the agency denied access by forcing the requestor to leave the premises,
17 regardless of whether the lawsuit resulted in additional disclosure). Thus, if the Court finds that the
18 records Petitioners requested are subject to disclosure under the CPRA and that Respondent did not
19 provide those records to Petitioners, Petitioners have prevailed. To find otherwise would incentivize
20 public agencies to delay and ignore requests, as Respondent has, knowing they could immunize
21 themselves from liability when public records are deleted as a matter of course in the meantime. As
22 such, Petitioners request that the Court declare them the prevailing party entitled to attorneys' fees,
23 with the exact amount to be set after submission of evidence with a motion for attorneys' fees.

24 **IV. CONCLUSION**

25 The public's right to know, expressed in statute, Constitution, case law, and voter initiative,
26 is well established in California. Here, the BID has flouted the public's right to transparency by
27 maintaining total secrecy over its public business for nearly two years. The BID has repeatedly and
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1 blatantly shirked its responsibilities under the CPRA—failing to comply with procedural
2 requirements, failing to conduct a reasonable search for records, failing to produce even one of the
3 disclosable public records Petitioners requested, and failing to engage even minimally in the present
4 litigation. Petitioners therefore respectfully request that their Petition and Complaint be granted.

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6 DATED: May 18, 2019

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